IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 576 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJNIKANT MANILAL PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

MRS SHILPA R SHAH for Appellant(s) : 1,MR JB PARDIWALA for Appellant(s) : 1,
MS ARCHNA RAVAL, PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 09/08/2007

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and order of the learned

Special Judge, Panchmahals at Godhra passed in Special (Corruption) Case No.1 of 1993 dated 09.05.1995 whereby the appellant was sentenced to undergo Rigorous Imprisonment for a period of one year and was ordered to pay Rs.500/- towards fine and in case of default to undergo Rigorous Imprisonment for further two months for the offence punishable under Section 7 of the Prevention of Corruption Act.

2.0 The brief facts giving rise to the present appeal are as under,

2.1 One Sattarbhai Ibrahimbhai Khadkhad-P.W.-1, herein, residing at Vlg. Vejalpur, Kaalol, Dist. Panchmahals is engaged in the business of transport. He owns two trucks, two tempos and one jeep. P.W.-1 has obtained necessary licenses for transport of goods in the said trucks and tempos. A son of P.W.-1 named Arif used to transport goods from Vejalpur to Ghoghmba and Godhra to Ghoghamba.

2.2 The case of the prosecution is that the present appellant-i.e. Rajnikant Manilal Patel who, at the relevant point of time, was P.S.I. at Rajgadh Police Station, used to demand Rs.125/- towards monthly installment from Arif son of P.W.-1 for allowing Arif to ply vehicle in the limits of his Police Station.

2.3 It is the say of P.W.-1 that on 28.07.1991 when his son Arif was returning from Ghoghamba, he was stopped by one Valamsing, Police Constable who was working with the appellant, herein. The said Valamsing told Arif that the appellant has demanded an amount of Rs.125/- and if he will not pay the same he will be harassed by issuing false memo and will be arrested. Arif, therefore, out of compulsion paid the said amount.

2.4 Thereafter, on 05.08.1991 Arif was again stopped with his tempo by the appellant. The appellant told Arif that, though, you are plying vehicle in my area you are not paying Rs.125/-

regularly towards monthly installment. The appellant told Arif to pay the said amount by the next day afternoon. The appellant also told Arif that if he is not available then Arif may give the aforesaid amount to constable Valamsingh. Arif, hence, informed his father-P.W.-1 about the said incident.

2.5 P.W.-1, therefore, approached Anti Corruption Bureau, Baroda to lodge a complaint under the Prevention of Corruption Act. After the recording of the complaint of P.W.-1 on 06.08.1991, panchas were called. On arrival of panchas, P.W.-1 and the panchas were introduced to one another. In pursuance to that the panchas read the complaint and signed it. P.W.-1, thereafter, produced an amount of Rs.125/- in different denominations i.e. one currency note of Rs.100/, one currency note of Rs.20- and one currency note of Rs.5/-. The said amount was given to one Himmatrao, Head Constable for experiment of ultra violet light and anthracene powder.

2.6 Himmatrao, thereafter, showed the said currency notes to P.W.-1 and Panchas in normal light as well as in ultra violet light but nothing significant appeared. Himmatrao, thereafter, smeared the aforesaid currency notes with anthracene powder and exposed it to normal light as well as to ultra violet light. When the said notes were exposed to the normal light nothing appeared, but, when the same was produced in ultra violet light, dots of white-blue colour appeared on them. The said paper was, thereafter, burnt and the bottle of anthracene was kept back in the cupboard. In pursuance of that P.W.-2 searched P.W.-1, but, nothing was found. Thereafter, P.W.-1 was given the amount of Rs.125/- treated with anthracene powder and was instructed not to touch the said amount until the same is demanded by the appellant and a preliminary 'Panchnama' was carried out to the aforesaid effect. Thereafter, P.W.-1 and the panchas were given necessary instructions by the Investigating Officer, Mr. Sindhi, P.W.-3. P.W.-2

was instructed to accompany P.W.-1 and to witness the transaction that may take place between P.W.-1 and the appellant.

2.7 The raiding party, thereafter, left Baroda at about 11:40 a.m. and reached at Ghoghamba at about 1:40 p.m.. On reaching Ghoghamba, P.W.-1 along with P.W.-2 went to Police Station, Rajgadh and the rest of the raiding party remained waiting at Amba Mata Temple, as per the arrangement.

2.8 In pursuance of that P.W.-1 along with P.W.-2 went to the Police Station and inquired about the appellant and they were told that the appellant had gone to take lunch. P.W.-1 and P.W.-2, hence, stood there waiting for the appellant for sometime.

2.9 On arrival of the appellant, P.W.-1 and P.W.-2 went in to the chamber of the appellant and at that time the appellant asked P.W.-1 whether he has brought the money or not. In reply to that P.W.-1 told the appellant that, in

connection with the incident of previous day i.e. 05.08.1991, he has come with full preparation. The appellant, thereafter, told P.W.-1 that he had stopped Arif previous day, but, as Arif tried to runaway, Constable Valamsing ran after him, caught Arif and brought him to me(appellant) and I gave two stick blows to Arif. P.W.-1, thereafter, told the appellant that he has come with his son Arif and he is standing outside the Police Station. The appellant, thereafter, gave memo to the son of P.W.-1 and obtained his signature thereon. Arif, thereafter, went out of the Police Station.

2.10 In pursuance of that the appellant told P.W.-1 that he had received the amount of installment for the seventh month but amount of sixth month and the current month are outstanding. The appellant further told P.W.-1 that he foregos the amount of sixth month and that P.W.-1 may pay amount only for the current month if he has brought the same with him. P.W.-1, therefore, produced the amount of Rs.125/-

treated with anthracene powder from his pocket and gave it to the appellant. The appellant accepted the said amount with his right hand and counted the same with both the hands and put the same in the drawer of his table. The appellant also told P.W.-1 to pay an amount of Rs.100/- towards fine. In reply to that P.W.-1 told the appellant that he shall pay the same later. Thereafter, P.W.-2 gave signal to the raiding party and the raiding party rushed into the chamber of the appellant.

2.11 After entering into the chamber of the appellant, the Investigating Officer, Mr. Sindhi-P.W.-3, gave his introduction to the appellant. Thereafter, P.W.-2 narrated the transaction which had taken place between P.W.-1 and the appellant which was recorded in the 'Panchnama'. Thereafter, on instructions of P.W.-3, P.W.-2 opened the drawer of the table of the appellant and took out the amount of Rs.125/. The notes recovered from the drawer of the table of the appellant were, then, counted and its numbers

were tallied with the numbers already noted down in the preliminary Panchnama and the same were found to be matching.

2.12 In pursuance of that the hands of the raiding party were exposed to the normal light as well as to the ultra violet light but nothing significant appeared. Thereafter, the hands of P.W.-1, P.W.-2 and the appellant were exposed to the normal light as well as to the ultra violet light. When the hands of P.W.-1, P.W.-2 and the appellant were exposed to the normal light nothing appeared, but, when their hands were exposed to the ultra violet light, dots of white-blue colour appeared on their hands. Thereafter, the 'Muddamal' recovered from the appellant was attached and a Panchnama to the aforesaid effect was drawn and a copy of the same was given to the appellant after obtaining his signature thereon.

2.13 Thereupon, an offence was registered against the accused persons under the Prevention of Corruption Act. After the completion of

investigation and after obtaining sanction, charge-sheet was submitted against the appellant before the learned Special Judge, Panchmahals at Godhra. The learned Special Judge framed and read over and explained charges under Section 7, 12, 13(1)(d) and 13(2)of the Prevention of Corruption Act. The appellant pleaded not guilty to the charge and claimed to be tried. Then prosecution examined as many as five witnesses. Then the statement of the appellant was recorded under Section 313 of the Criminal Procedure Code. The learned Special Judge heard both the parties. Arguments, both oral as well as written were submitted before the learned Special Judge and the learned Special Judge convicted and sentenced the appellant as stated in Para-1 of the judgment. Hence, the present appeal.

3.0 Heard, learned Counsel for the appellant as well as learned A.P.P. at length and have perused the record very carefully. Mr. Pardiwala, learned Counsel on behalf of Ms. Shilpa R. Shah, learned Advocate for the

appellant has submitted that the trial Court has committed an error by not taking into consideration major contradiction in the evidence of P.W.-1 and P.W.-3 i.e. as per the say of P.W.-1- he had not met P.W.-3 prior to 6th August, 1991 whereas the say of P.W.-3 is that P.W.-1 had come to his office on 5th August, 1991, but, since P.W.-1 had forgotten some papers, he did not lodge the complaint on that day and P.W.-1 again came to his office on 6th August, 1991 and lodged complaint, which is fatal to the case of the prosecution.

3.1 Learned Counsel has further submitted that, though, the P.W.-1 was aware that A.C.B. Office, Panchmahals is situated at Godhra which is just 13 kilometers away from his place of residence i.e. Vejalpur, he choose to lodge complaint at A.C.B. Office, Baroda which is about 65 kilometers away from Vejalpur, since P.W.-1 and Mr. Sindhi, Investigating Officer-P.W.-3, herein, are familiar with each other. The said fact creates doubt about the genuineness of the

'Trap' and that aspect has not been taken into consideration by the trial Court.

3.2 Learned Counsel has submitted that since the appellant had issued several memos against the son of P.W.-1 and his family members for transporting passengers in goods vehicle illegally, the appellant was falsely implicated in the alleged offence by P.W.-1.

3.3 Learned Counsel has further submitted that P.W.-2- Raysinghbhai Pargi's father Parthingbhai and P.W.-1 are engaged in the business of carting and are familiar with each other, and hence, the trial Court ought to have held that P.W.-2 is not an independent witness.

3.4 In support of the same learned Counsel has placed reliance on a decision of the Hon'ble Apex Court in the case of ***"Bharatkumar Jaimanishanker Mehta Vs. State"*** reported in 1982 (1) GLR 605 wherein at Para-11 it has been held as under,

> **"11.** ... Choosing of a person as a panch is a most important aspect in corruption case, and an independent person unconnected with the prosecution is required to be chosen so that there is guarantee of his reliability and the learned Special Judge, therefore, must feel that the person chosen is a person on whom implicit reliance could be placed. It must always be remembered that the whole prosecution case in a corruption case practically hangs on the evidence of this panch witness, a single person who either destroys the prosecution case or destroys the career of a public servant. It is at times very difficult, almost impossible for a public servant to find out all antecedents of a panch witness and suggest as to why and under what circumstances he is deposing against him. It is, therefore, necessary that great care should be taken by the investigating agency to choose a proper person whose integrity and whose reliability cannot be doubted..."

3.5 Learned Counsel has further stated that the trial Court ought to have considered the fact that at the time of offence in question, the appellant was serving as P.S.I. at Rajgadh, Dist. Panchmahals whereas sanction to proceed against the appellant was granted by Commissioner of Police, Ahmedabad who is not competent to grant sanction to proceed against the appellant.

3.6 Learned Counsel has further submitted that the trial Court ought to have held that the prosecution has failed to establish that the appellant demanded the amount in question as a motive or reward for doing some favour to P.W.-1 or his family members in the exercise of his official duty.

3.7 In support of the same, learned Counsel has placed reliance on a decision of the Apex Court in the case of ***"Dalpat Singh and Another Vs. State of Rajasthan"*** reported in AIR 1969 SC 17 wherein at Para-16 it was held as under,

> "**16.** Before an offence is held to fall under S.161, the following requirements have to be satisfied: (1) the accused at the time of the offence was, or expected to be, a public servant,(2)that he accepted, or obtained, or agreed to accept, or attempted to obtain from some persona gratification, (3)that such gratification was not a legal remuneration due to him, and (4) that he accepted the gratification in question as a motive or reward, for (a) doing or forbearing to do an official act; or (b) showing, or forbearing to show favour or disfavour to some one in the exercise of his official

> functions; or (c) rendering, or attempting to render, any service or dis-service to some one, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant. As mentioned earlier admittedly the appellant were public servants. It is also established that they obtained from the several witnesses examined in this case illegal gratification. The word 'obtain' is a strong word. It includes also things received by extortion. But can it be said that they obtained the gratifications in question as a motive or reward for doing or for bearing to show favour or disfavour to the persons in question in the exercise of their official functions? The evidence on record clearly shows that neither the appellants intended to show any official favour to the persons from whom they extorted money or valuable things nor those persons expected any official favour to the persons...”

3.8 Learned Counsel has further submitted that the trial Court has committed an error by holding the appellant guilty under Section 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act, though, charges for the said sections were not framed against the appellant.

4.0 On the contrary, Ms. Archna Raval, learned APP has supported the case of the prosecution and has stated that after taking into

consideration all the facts and circumstances of the case and the documents placed on record, the trial Court has passed the order of conviction, and hence, no interference is called for by this Court.

4.1 In support of her case, learned APP has placed reliance on a decision of the Jharkhand High Court in the case of ***"Gokuleshwar Banerjee Vs. State of Jharkhand"*** reported in 2005 Cri. L.J. 1535 wherein at Para-14 it was held that if minor discrepancies in evidence of prosecution witnesses does not cast any cloud of suspicion to the credibility of prosecution case, no infirmity said to have been committed by the competent Authority in passing sanction order for prosecuting accused person.

4.2 Learned APP has also placed reliance on another decision of the Andhra Pradesh High Court in the case of ***"Shaik Abdul Salam Vs. State of Andhra Pradesh"*** reported in 2006 Cri. L.J. 22 wherein the similar principle has been

reiterated.

5.0 The prosecution, in support of its case, has examined as many as five witnesses and has placed reliance on the complaint-Exhibit-14 and the Panchnama-Exhibit-18.

5.1 Sattarbhai-P.W.-1 in his deposition has stated that he is residing at village Vejalpur and is engaged in the business of transport. P.W.-1 has further stated that his son Arif was harassed by the appellant off and on, since Arif was not regularly paying Rs.125/- towards monthly installment to the appellant. P.W.-1 has further stated that on 28.07.1991, when his son Arif was returning from 'Haat' at Ghoghamba village, he was intercepted and threatened by one Valamsing, Police Constable working with the appellant who told Arif that the appellant has demanded Rs.125/- towards the payment of monthly installment and if Arif would not pay the same, he would be harassed by issuing false memo and would be arrested. Arif, therefore, paid an

amount of Rs.125/- to Valamsing. P.W.-1 has further stated that thereafter, on 05.08.1991, when Arif was proceeding in his tempo towards Ghoghamba, he was again intercepted by the appellant. The appellant told Arif that, though, he was plying vehicle in the limits of his Police Station, he was not paying the installment of Rs.125/- regularly. The appellant, therefore, told Arif to pay the amount of installment of Rs.125/- by the next day afternoon. The appellant also told Arif that in case of his non-availability, Arif may handover the money to Constable Valamsingh. Arif, therefore, informed his father i.e. P.W.-1 about the said incident. Hence, P.W.-1 went to Baroda with a view to lodge a complaint with A.C.B., Baroda under the Prevention of Corruption Act.

5.2 On 06.08.1991, P.W.-1 lodged a complaint with A.C.B., Baroda. P.W.-1 has further stated that after the recording of his complaint, panchas were called. On arrival of panchas, P.W.-1 and the panchas were introduced to one another.

In pursuance to that the panchas read the complaint given by P.W.-1 and signed it. P.W.-1, thereafter, produced an amount of Rs.125/- in different denominations i.e. one currency note of Rs.100/-, one currency note of Rs.20- and one currency note of Rs.5/-. The said amount was given to Head Constable, Himmatrao for experiment of ultra violet light and anthracene powder.

5.3 P.W.-1 has further stated that Himmatrao, thereafter, showed the said notes in normal light as well as in ultra violet light but nothing significant appeared. Himmatrao, thereafter, smeared the said currency notes with anthracene powder and exposed it to normal light as well as to the ultra violet light. When the said notes were exposed to normal light nothing significant appeared, but, when the same were exposed to ultra violet light, dots of white-blue colour appeared thereon. Thereafter, similar experiment was carried out on the hands of constable Himmatrao. When the hands of the Himmatrao were shown in the normal light nothing significant

appeared, but, when his hands were shown in the ultra violet light, dots of white-blue colour appear thereon. The said paper was, thereafter, burnt and the bottle of anthracene powder was kept back in the cupboard. In pursuance to that Panch-No.1 i.e. P.W.-2 searched P.W.-1, but, nothing was found. Thereafter, P.W.-1 was given the currency notes of Rs.125/- treated with anthracene powder and was told not to touch the said notes till the same were demand by the appellant. Thereafter, the numbers of the said notes were noted and a preliminary 'Panchnama' was carried out to the aforesaid effect. Thereafter, P.W.-1 and the panchas were given necessary instructions. P.W.-2 was told to accompany P.W.-1 and to witness the transaction between P.W.-1 and the appellant.

5.4 The raiding party left Baroda at about 11:40 a.m. and reached at Ghoghamba at about 1:40 p.m.. On reaching Ghoghamba, P.W.-1 along with the P.W.-2 went to Police Station, Rajgadh and the rest of the raiding party remained waiting at

Amba Mata Temple, as per the arrangement .

5.5 P.W.-1 has further stated that when he along with P.W.-2 went to the Police Station and inquired about the appellant, they were told that the appellant had gone to take lunch. P.W.-1 and P.W.-2, hence, stood there waiting for the appellant for sometime. On arrival of the appellant, P.W.-1 and P.W.-2 went into the chamber of the appellant. When P.W.-1 and P.W.-2 entered into the chamber of the appellant, the appellant asked whether P.W.-1 has brought the money or not. In reply to that P.W.-1 told the appellant that, in connection with the incident of yesterday, he has come with full preparation. The appellant, thereafter, told P.W.-1 that he had stopped Arif yesterday, but, as Arif tried to runaway, Constable Valamsing ran after Arif and caught him, brought him to me and I gave two stick blows to Arif. P.W.-1, therefore, told the appellant that he has come with his son Arif and he is standing outside the Police Station. The appellant, thereafter, gave memo to the son of

P.W.-1 and obtained his signature. Arif, thereafter, went out of the Police Station.

5.6 In pursuance of that the appellant told P.W.-1 that he had received the amount of installment for the seventh month but the amount of installment for sixth month and the current month are outstanding. The appellant, thereafter, told P.W.-1 that he foregos the amount of sixth month and that P.W.-1 may pay amount only for the current month if he has brought the same with him. P.W.-1, therefore, produced the amount of Rs.125/- treated with anthracene powder from his pocket and gave it to the appellant. The appellant accepted the said amount with his right hand and counted the same with both the hands and put the same in the drawer of his table. The appellant also told P.W.-1 to pay an additional amount of Rs.100/- towards fine. In reply to that P.W.-1 told the appellant that he shall pay the said amount later. Thereafter, P.W.-2 gave signal to the raiding party and the raiding party rushed into the chamber of the appellant.

5.7 After entering into the chamber of the appellant the Investigating Officer, Mr. Sindhi-P.W.-3, gave his introduction to the appellant. P.W.-2, thereupon, narrated the transaction which had taken place between P.W.-1 and the appellant. The same was recorded by way of 'Panchnama'. P.W.-2, thereafter, on instructions of P.W.-3, opened the drawer of the table of the appellant and took out the amount of Rs.125/-. The notes recovered from the drawer of the table of the appellant were, then, counted and its numbers were tallied with the numbers already noted down in the preliminary Panchnama and the same were found to be matching.

5.8 In pursuance of that the experiment of the ultraviolet light and anthracene powder was carried out on the said currency notes. When the said notes were exposed to the normal light nothing significant appeared, but, when the same were exposed to the ultraviolet light, dots of white-blue colour appeared thereon. Thereupon,

similar experiment was carried out on the hands of the raiding party, but nothing unusual appeared. Thereupon, hands of P.W.-1, P.W.-2 and the appellants were exposed to the normal light as well as to the ultra violet light one by one. When the hands of P.W.-1, P.W.-2 and the appellant were exposed to the normal light nothing significant appeared, but, when their hands were exposed to the ultra violet light, dots of white-blue colour appeared on the hands of P.W.-1, P.W.-2 and the appellant. Thereafter, the 'Muddamal' recovered from the appellant was attached and a Panchnama to the aforesaid effect was drawn. A copy of the same was given to the appellant and his signature was obtained thereon.

5.9 At the time of his cross-examination, P.W.-1 stuck to the version given by him in his deposition and the defence failed to bring out anything which could help the appellant.

5.10 The version given by P.W.-1 is supported by evidence of one Raysinghbhai Parthingbhai

Pargi – P.W.-2 – original Panch No.1 who in his deposition has stated that on instruction of the Investigating Officer, Mr. Sindhi-P.W.-3, he went to A.C.B. Office, Baroda on 06.08.1991 along with one Vinodchandra Babulal Nayak-Panch No.2, now, deceased. On reaching there, P.W.-2 and Panch No.2 were introduced to P.W.-1. In pursuance of that both P.W.-1 and Panch No.2, read the complaint given by P.W.-1 and signed the same. Thereafter, an amount of Rs.125/-, in currency notes of different denominations, was produced by P.W.-1 and the experiment of ultraviolet light and anthracene powder was carried out on the said currency notes and a preliminary Panchnama was also drawn to that effect. Then, panchas and the raiding party were given necessary instructions. The raiding party, thereafter, left for Rajgadh Police Station. On reaching Rajgadh, P.W.-2 went to the police Station along with P.W.-1 and witnessed the transaction that took place between P.W.-1 and the appellant.

5.11 P.W.-2 in his deposition as well as in

his cross-examination has clearly stated that after going into the chamber of the appellant, the appellant referred to the event of the previous day and asked P.W.-1 that if P.W.-1 has brought the money then he may give the same. On demand of money by the appellant, P.W.-1 produced the amount of Rs.125/- treated with anthracene powder which was accepted by the appellant. Thereafter, P.W.-2 gave signal to the raiding party and the raiding party caught the appellant red-handed.

5.12 The case of the prosecution is also supported by the evidence of P.W.-3- Mr. Sindhi, Investigating Officer who, in his deposition, has stated that on 06.08.1991, P.W.-1 came to his office and lodged a complaint. Thereafter, Panch No.1-i.e. P.W.-2 and Panch No.2, now, deceased, arrived and after reading the complaint given by P.W.-1, signed the same. Then, P.W.-1 produced an amount of Rs.125/- in different denominations and experiment of anthracene powder and ultraviolet light was carried out and a

preliminary Panchnama was drawn to the said effect. Thereupon, P.W.-3 gave necessary instructions to the complainant, panchas and the raiding party. The raiding party left Baroda at about 11:40 a.m. and reached Rajgadh at about 1:40 p.m.. On reaching Rajgadh, as per the arrangement, P.W.-1 and P.W.-2 went to the police Station and the rest of the raiding party remained waiting at Amba Mata Temple. Thereafter, on receiving signal from P.W.-2, the raiding party rushed into the chamber of the appellant. After entering into the chamber of the appellant, Mr. Sindhi-P.W.-3 gave his introduction to the appellant. Thereafter, on search of the drawer of the table of the appellant through P.W.-2, amount of Rs.125/- was recovered and when its numbers were tallied with the numbers noted in the preliminary 'Panchnama', the same were found to be matching. Then the experiment of anthracene powder and ultraviolet light was carried out on the said currency notes. When the aforesaid currency notes were exposed to the normal light nothing significant appeared,

but, when the said currency notes were exposed to the ultraviolet light, dots of white-blue colour appeared thereon. Similar experiment was carried out on the hands of the raiding party. However, nothing significant appeared on their hands. Thereupon, the hands of P.W.-1, P.W.-2 and the appellant were exposed to the normal light, but, nothing significant appeared. However, when their hands were exposed to the ultraviolet light, dots of white-blue colour appeared on their hands. Thereafter, Panchnama to the aforesaid effect was drawn and the list of 'Muddamal' recovered from the appellant was prepared and signatures of panchas were obtained thereon and a copy of the same was given to the appellant after obtaining his signature thereon. Thereafter, offence came to be registered against the appellant.

5.13 Hence, from the evidence of P.W.-1, P.W.-2 and P.W.-3 it becomes clear that the appellant demanded an amount of Rs.125/- from P.W.-1 for allowing Arif, son of P.W.-1, to ply vehicle in the limits of his Police Station, P.W.-1 offered

the same and the appellant was caught red-handed while accepting the said amount.

5.14 Apart from that, the further reply dated 07.04.1995 filed by the appellant-himself also supports the case of the prosecution wherein the appellant has stated that on 05.08.1991 while he along with Valamsing were going to Godhra to attend a Crime Conference, son of P.W.-1, Arif was found to be carrying passengers illegally in his goods vehicle, and hence, he tried to stop Arif. At that time, Arif stopped the tempo and ran away, and hence, Constable Valamsing ran after Arif, caught him and brought him to the appellant and the appellant gave him two stick blows. The admission by the appellant with regard to the incident happened on 05.08.1991 clearly supports the story put forward by P.W.-1 that after giving stick blows to his son Arif, the appellant told Arif that though he was plying vehicle in the limits of his police station, Arif was not paying the amount of Rs.125/- towards monthly installment regularly to the appellant

and that the appellant told Arif to pay the said amount by the next day afternoon i.e. by 06.08.1991.

5.15 Apart from that, P.W.-2 has also deposed that on 06.08.1991, when he along with P.W.-1 entered into the chamber of the appellant on the day of alleged incident, the appellant asked P.W.-1 as to whether he has brought the money or not. P.W.-2 has further stated that the appellant, thereupon, told P.W.-1 that he had received amount for the seventh month, but, amount for the sixth month and current month was not received by him. Hence, the admission of the aforesaid fact by the appellant in the presence of P.W.-2 clearly suggests that the story put forward by P.W.-1 that the appellant demanded and accepted Rs.125/- from him in the presence of P.W.-2 for allowing his son Arif to ply the vehicle in the limits of his Police Station, requires to be accepted.

5.16 In a case where the evidence is

overwhelming and convincing and the panch witnesses inspire confidence and on appreciation of the evidence, it clearly appear that the panch was an independent and reliable person, there is no reason to discard the evidence of panch on the ground that it requires independent corroboration.

5.17 In the case on hand, the evidence of P.W.-1 is supported by the complaint- Exhibit-14 and Panchnama- Exhibit-18 as well as by evidence of P.W.-2 and P.W.-3 who are independent witnesses. From the evidence of P.W.-2 and P.W.-3 it clearly transpires that the appellant demanded Rs.125/- from P.W.-1 for allowing son of P.W.-1 Arif to ply vehicle in the limits of his Police Station, P.W.-1 offered the said amount and the same was accepted by the appellant in the presence of P.W.-2 and later on was recovered from the drawer of the table of the appellant, in the presence of P.W.-3 and the raiding party. Hence, from the evidence of both P.W.-2 and 3 as well as from the complaint- Exhibit-14 and the

Panchnama- Exhibit-18, the ingredients of bribe i.e. the demand, offer and acceptance are proved beyond doubt by the prosecution. The evidence of P.W.-2 and 3 are natural and trustworthy, and hence, there is no reason to disbelieve them.

5.18 Since the evidence discussed hereinabove are found to be sufficient in deciding the Appeal, I am not discussing the depositions of other witnesses, as they are not of much relevance.

5.19 As regards the contention raised by the learned Counsel for the appellant that there are major contradictions in the evidence of P.W-1 and P.W.-3 is concerned, it is required to be noted that P.W.-1 is coming from the mofussil area. The offence in question took place in the year 1991 whereas the evidence of P.W.-1 and P.W.-3 were recorded in the year 1995 i.e. almost after four years of the alleged offence. Hence, some contradictions are bound to occur in the depositions of P.W.-1 and P.W.-3. However, the

fact remains that the appellant was caught red-handed which is clear from the evidence available on record and, more particularly, the evidence in the form of 'Panchnama' - Exhibit-18, depositions of P.W.-2 and P.W.-3. Therefore, in my opinion, even if there are contradictions, the same are not of much relevance in the present case and that the same shall not have any bearing on the merits of the case. In that view of the matter, the contention raised by the learned Advocate for the appellant does not hold ground and deserves to be rejected.

5.20 As regards the contention raised by the learned Counsel for the appellant that since the appellant had good relations with P.W.-3, he chose to file complaint at Baroda instead of Godhra with a view to falsely implicate the appellant in the alleged offence is concerned, it would be relevant to refer to a decision of the Apex Court in the case of the ***"State of Madhya Pradesh Vs. Shambhu Dayal Nagar"*** reported in 2006 AIR SCW 5737. In that case the

respondent-accused demanded money from the complainant for not arresting him and for not seizing guns from his custody and respondent-accused was caught red-handed by the Authorities while accepting the amount of bribe. In his defence, respondent-accused pleaded that he had been falsely implicated in the said offence since P.W.-1 had some grudge against him. However, on the facts and circumstances of the case and on the basis of the fact of recovery of amount of bribe from the pocket of the respondent-accused and on the basis of evidence of two independent witnesses i.e. P.W.-6 and P.W.-11, the Hon'ble Apex Court convicted the respondent-accused.

5.21 In the case on hand also, from the record it transpires that the appellant demanded amount of Rs.125/- from P.W.-1 for allowing son of P.W.-1, Arif to ply vehicle in the limits of his Police Station, in the presence of P.W.-2 and ultimately the amount in question was recovered from the drawer of the table of the appellant and that the hands of the appellant were also found

to be stained with anthracene powder. The said fact is supported by the evidence of two independent witnesses i.e. P.W.-2, P.W.-3 and the Panchnama- Exhibit-18. Hence, the said contention also requires to be rejected.

5.22 As regards the contention raised by the learned Counsel for the applicant that father of Raysingbhai-P.W.-2, Parthibhai is familiar with P.W.-1 is concerned, in support of the same, except, mere allegations, no substantial evidence is produced by the appellant, and therefore, the said contention also requires to be rejected. Hence, the decision of this Court in the case of ***"Bharatkumar Jaimanishanker Mehta"***(Supra) relied on by the learned Counsel for the appellant shall not come to the rescue of the appellant.

5.23 As regards the contention raised by the learned Counsel for the appellant that since the Police Commissioner, Ahmedabad was not appointing authority, he could not have given sanction to proceed against the appellant is concerned, the

said contention was not raised before the trial Court, and hence, the same requires to be rejected.

5.24 As regards the contention raised by the learned Counsel that the prosecution has failed to establish the motive for demanding the bribe by the appellant is concerned, it would be relevant to refer to decision of the Apex Court in the case of ***"State of Andhra Pradesh Vs. R. Jeevaratnam"*** reported in 2005 AIR SCW 3132. In that case, accused demanded bribe for clearing file of tender of complainant and repeatedly made demands. The complainant, therefore, called the accused in a hotel to receive the amount of bribe. When the accused entered into the hotel room, he enquired whether the complainant has brought the amount or not. The complainant offered the money and the same were accepted by the accused. On receipt of the amount, the accused gave assurance that the file of the complainant would be cleared. At that time, the accused was caught red-handed. The Hon'ble Apex

Court held that the assurance given by the accused, on receipt of the money, to the complainant that the file of tender shall be cleared, clearly establishes that the amount received by the accused was bribe.

5.25 In the case on hand, the appellant repeatedly demanded amount of Rs.125/- from Arif, son of P.W.-1, for allowing Arif to ply vehicle in the limits of his Police Station. The said fact is supported by the evidence of P.W.-2 who in his deposition has stated that on 06.08.1991 when he along with P.W.-1 entered into the chamber of the appellant, the appellant asked P.W.-1 whether he has brought money or not. The appellant also told P.W.-1 that he has received amount for seventh month, but, he has not received the amount for the six month and the current month. The aforesaid facts clearly suggests that the amount of Rs.125/- demanded and received by the appellant for allowing Arif-son of P.W.-1 to ply the vehicle in the limits of his Police Station was bribe. Hence, the said

contention also requires to be rejected and the decision of the Hon'ble Apex Court in the case of ***"Dalpat Singh and Another"***(Supra) relied on by the learned Counsel for the appellant shall not apply to the case on hand.

5.26 The contention raised by the learned Counsel for the appellant that when the charges for the offences punishable under Sections 12, 13(1)(d)and 13(2) have not been framed by the learned trial Judge, the learned Judge ought not to have convicted the appellant-accused under these Sections also cannot be accepted in view of the fact that at the most it can be termed as irregularity and in no way fatal to the case of the prosecution. It is also required to be noted that no separate sentence under these sections have been imposed by the learned Judge while convicting the appellant-accused. Moreover, there is evidence on record to the effect that offence under these sections are made out against the appellant-accused. Even the charge as framed indicates that the appellant is involved in the

commission of offences under these Sections.

5.27 Lastly, it has been contended by the learned Counsel for the appellant that in view of the judgment rendered by the Hon'ble Supreme Court in the case of ***"Ganga Kumar Srivastava Vs. State of Bihar"*** reported in (2005) 6 SCC 211 use of phenolphthalein powder in the 'Trap' is a must. There cannot be any straight-jacket formula with regard to whether phenolphthalein powder or anthracene powder is required to be used in a 'Trap'. Nowhere in the judgment there is mention that phenolphthalein powder only should be used.

5.28 In view of the above discussion and taking into consideration the facts and circumstances of the case and the evidence available on record, I have no hesitation in holding that the appellant demanded money from P.W.-1 for allowing son of P.W.-1 Arif to ply vehicle in the limits of his Police Station, P.W.-1 offered the money and the same was accepted by

the appellant in the presence of P.W.-2, and hence, the ingredients of bribe i.e. demand, offer and acceptance has been successfully established by the prosecution beyond doubt. I am, therefore, in complete agreement with the reasoning given and the findings arrived at by the trial Court and find no reason to interfere with the same.

6.0 In the result, the appeal stands dismissed. The judgment and order of the learned Special Judge, Panchmahals at Godhra passed in Special (Corruption) Case No.1 of 1993 dated 09.05.1995 stands confirmed. Looking to the weak financial position in which the appellant-accused is placed, the appellant shall surrender before the competent Authority within a period of **TEN WEEKS** from today.

(M.D. Shah,J.)

Umesh/